

**CITY OF MORGAN HILL
SPECIAL AND REGULAR CITY COUNCIL
AND REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – NOVEMBER 1, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 6:45 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Absent: Mayor Pro Tempore Grzan

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

1. INTERVIEW TO FILL VACANCY ON THE LIBRARY, CULTURE & ARTS COMMISSION

The City Council interviewed Robert Boyd to fill a vacancy on the Library, Culture & Arts Commission.

Mayor Kennedy stated that it would be his recommendation to appoint Robert Boyd to the Library, Culture & Arts Commission.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan Absent, **Ratified** Mayor Kennedy's **Appointment** of Robert Boyd to serve an unexpired term on the Library, Culture, & Arts Commission; term ending April 1, 2007.*

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Tarah Duarte, Mayor for the Day, led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy recognized Tara Duarte for being appointed Mayor for the Day. He stated that he has agreed to write a letter to Dr. Alan Nishino, Superintendent of the Morgan Hill Unified School District, requesting his assistance in providing a gymnasium and locker room at the Charter School. He indicated that Mayor Duarte drafted a letter that will be sent to the Dr. Nishino.

PROCLAMATION

Mayor Kennedy presented Donna Dicker and Judith Kinker with a proclamation, recognizing the 25th Anniversary of the Morgan Hill Chapter of the American Association of University Women.

ANNOUNCEMENT

Council Member Tate announced that Jennifer Tate is the Chair of the Centennial Committee, and that she appointed him and Roger Knopf to head up the Centennial Project. He indicated that they have been working on the Centennial Project for a little over a year, and that the Project will be unveiled on November 10, 2006. He indicated that the project is a History Trail, a spiral walkway that will include tiles representing 92 separate events that commemorate significant happenings in the history of Morgan Hill. He said that there is a lot of work to do in the next 9 days to get the project ready. However, a significant portion of the trail is ready to go, and that a party to celebrate the City's centennial on November 10 from 2-4 p.m. will take place at the historic Morgan Hill House.

CITY COUNCIL REPORT

Council Member Sellers indicated that he has been serving on several committees. He stated that he has been most active recently on Valley Transportation Authority (VTA) activities; particularly on the Caltrain project that is heating up with major decisions coming forward that may affect Caltrain services long term. He indicated that a subcommittee meeting was held last week where it was indicated that a new train/system is being considering. He stated that the adoption of this system could have profound affects on the ability to get most of the Morgan Hill residents heading north to work every day, and may impact their ability to do so. He thanked everyone who has chosen to run for elected office this fall as it has been a significant undertaking for everyone. He stated that he has been extremely impressed by the caliber of candidates seeking office, and that he is confident the community will be in good hands; regardless of the election outcome. He felt that this has been a clean and upbeat campaign and thanked everyone for undertaking campaigning in this capacity. He stated that the Council has developed a solid system for reporting and relying on each other. He felt it critical to maintain this level of trust and reliability following the election. He recommended the Council continue to do what is best for the community and represent Morgan Hill well. He noted that Mayor Kennedy served as the VTA Chair/Board Member this year, and that either he or another member on the Council will be taking on this role next year. He thanked Mayor Kennedy for his leadership on the VTA as it has been a significant asset to VTA; ensuring Morgan Hill's interests were represented. He looks forward to continuing this tradition and filling the big shoes Mayor Kennedy has left for the City, if re-elected.

Mayor Kennedy announced that earlier this evening, the Council reviewed some of the documents contained in the Civic Center Time Capsule. He requested that City Manager Tewes address the opening of the time capsule.

City Manger Tewes indicated that 33 years ago the Mayor and Council dedicated a brand New City Hall; the building that exists today. As part of the dedication, the City buried momentous from that period of time. The 1973 Council adopted a motion that suggested the time capsule be opened in the City's centennial year. Staff was able to find three time capsules that contained various documents;

including a commemorative addition of the local newspaper, materials from the library, and other momentous. He indicated that these items are on display in the lobby and that these items will be turned over to the Historical Society for archiving.

Mayor Kennedy announced that the City has been joined this evening by Mayor and Council members in office from the time in which the time capsule was buried. In attendance this evening was former Mayor Virginia Mae Day, and Council Members Ed Johnson and Dan Bertelli to review the contents of the time capsule.

Former Council Member Ed Johnson indicated that at the time the 1973 Council members dedicated the time capsule, they did not realize that time would go by so fast. He said that the Council had a lot of fun constructing this building. He explained that in those days, the City could not borrow money. He stated that Mr. Acton, owner of the civic center property at the time, gave the City some funds when he was building his estates. He indicated that the land was divided into 10 parcels. The City was able to purchase one parcel each year, for the next ten years; leasing the remainder parcels until all parcels were purchased through increment purchasing. He thanked the current Council and staff for their donation of time to the City of Morgan Hill to make the town better.

Former Council Member Dan Bertelli also thanked the Council for being invited to the Centennial celebration and the opening of the time capsule. It was his recollection of 1973 that the City was a lot smaller and that there were a lot of dreams and plans serving on the Council. The Council, at the time, planned for the Civic Center and the fire station located on Llagas Road. He stated that during his 11 years of service, he found that there were day to day activities that were not meaningful. However, when you look back 33 years, he felt that Morgan Hill turned out to be a wonderful city, partly because of the redevelopment that was approved. He sees the results of redevelopment, and that he was proud to be a part of the City during that time.

Mayor Kennedy thanked Mr. Bertelli and Mr. Johnson for their many years of service to the City of Morgan Hill.

CITY MANAGER REPORT

City Manager Tewes reported that this is the 25th anniversary of the operation of the Morgan Hill Redevelopment Agency. He indicated that last week, the City celebrated a grand opening of the Centennial Recreation Center and the Wildlife Trail with over 2,000 residents of Morgan Hill in attendance. He thanked the community for their enthusiasm of this spectacular facility. He reported that as of today, the City has 1,017 membership packages representing 3,314 individuals. He said that it was the City's goal to have 985 packages by the end of the calendar year. With 60 days remaining in the calendar year, the City is well past this goal. These figures indicate that citizens of Morgan Hill are embracing the facility and that it is meeting its objectives of being a multi generational facility where people of all ages can come together and interact; promoting community fitness. He thanked the community for its support last week and for its continued support with memberships.

City Manager Tewes announced that next week is a significant milestone in the history of the Morgan Hill Redevelopment Agency. He stated that staff will be presenting amendments to the Redevelopment

Plan that would extend its opportunity to receive ongoing revenue to continue the work of redevelopment in the City. He announced that a public hearing will be held on Wednesday, November 8. He indicated that he has been asked two types of questions relating to the plan amendment: 1) Why did it take so long, and 2) why is it taking place so fast. He clarified that it was 20 months ago, January 2005, at a Council retreat, where the Council directed staff to begin the work of studying the feasibility of extending the Redevelopment Plan. In November 2005, the Council received the feasibility study and directed staff to seek consultant assistance. At that time, staff informed the Council that an amendment to the Redevelopment Plan is highly technical, legalistic, and requires many different milestones of reports, and public involvement along the way, and could not be done quickly. Staff also advised the Council that in the end, the Redevelopment Plan must be adopted by an ordinance of the City Council and by the Redevelopment Agency. He noted that ordinances require a first reading, and that it is being proposed that the first reading of the ordinance take place on November 8 with a second opportunity to consider/adopt the ordinance on November 15; becoming effective 30 days thereafter. He stated that this is significant because the legislature deals with lots of bills on a two year cycle. He felt it important that the work be done before the end of this calendar. In order to accomplish all the work, staff is scheduling a public hearing on November 8, 2006 to give the public and the City Council/Redevelopment Agency the opportunity to review the proposed amendment(s) to the Redevelopment Plan.

CITY ATTORNEY REPORT

City Attorney Kern indicated that she did not have a report to present this evening.

OTHER REPORTS

Council Member Tate stated that a fantastic event was held last Saturday where over 2,000 individuals attended the ribbon cutting ceremony at the Centennial Recreation Center. He said that he was asked to take on the responsibility of providing food for the 2,000 individuals in attendance. He recognized and thanked the Morgan Hill Police Officers Association and the Santa Clara County Fire Fighter's Association who heard of his plight and offered to assist.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Craig van Keulen stated that he is happy and proud the City completed the Centennial Recreation Center as it is a tremendous facility. This was the most extensive turnout he has ever seen for a facility built by the City. He said that this facility would not have been accomplished without the Council's leadership, guidance, support and perseverance. He acknowledged that there were some tough times with regards to accomplishing this project; with Council Member Sellers attending several of the subcommittee meetings with regards to this facility. He felt the facility would attract members from the community, and will improve the economy. He thanked the Council for this terrific facility.

Council Member Sellers said that the Council recognizes commission members as they complete their terms. He noted that the commissions, particularly the Parks & Recreation Commission, spend countless hours in reviewing plans. He felt it might be appropriate to recognize individuals who volunteer their time and do so much for the City. He requested the Mayor give consideration on how the Council can appropriately recognize commissioners for all their efforts.

Mayor Kennedy stated that he would talk with the City Manager to see if there is some way the City can accomplish recognizing its commissioners.

Mayor Kennedy presented Certificates of Appreciation to Counselor Mary Hoage, Mary and John McQue, and Liam McDonna for being instrumental in the efforts to establish a Sister City relationship between Headford, Ireland and the City of Morgan Hill; and for arranging a performance on the history of Headford in dance, music and song.

Mayor Kennedy presented a Certificate of Appreciation to Bernie Mulligan for his many years of outstanding service to the City of Morgan Hill,

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Approved** Consent Calendar Items 2-10 as follows:*

2. **ACCEPTANCE OF HISTORIC CONTEXT STATEMENT FOR THE CITY OF MORGAN HILL**

Action(s): ***Accepted** the Historic Context Statement, with Modifications to be Made as Outlined in the October 25, 2006 Staff Report, and as may be Identified and Directed by the Council.*

3. **FINAL MAP APPROVAL VILLAS OF SAN MARCOS PHASE II-TRACT 9838**

Action(s): *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney; and 3) **Authorized** the Recordation of the Final Map and the Subdivision Improvement Agreement; Following Recordation of the Development Improvement Agreement.*

4. **APPROPRIATE FUNDS FOR CHANGE ORDER FOR THE WILDLIFE BIKE TRAIL PROJECT**

Action(s): ***Appropriated** \$45,000 in Additional Funds from the Current Year Un-Appropriated Parks Maintenance Fund (302).*

5. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9561, QUAIL CREEK PHASE III**
*Action(s): 1) **Adopted** Resolution No. 6058, Accepting the Subdivision Improvements Included in Tract 9561, Commonly Known as Quail Creek Phase III; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*
6. **SUBSEQUENT DEVELOPMENT REIMBURSEMENT AGREEMENT WITH LATALA FAMILY LP FOR THE LANDS OF LATALA**
*Action(s): **Approved** the Subsequent Development Reimbursement Agreement and **Authorized** the City Manager to Execute the Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.*
7. **APPROVAL OF FUNDING TO PREPARE A REVISED SEWER ASSESSMENT DISTRICT FEASIBILITY STUDY FOR THE COUNTY'S PORTION OF HOLIDAY LAKE ESTATES**
*Action(s): **Appropriated** \$12,000 from the Current Year Un-Appropriated Sewer Operations Fund (640).*
8. **MORGAN HILL LIBRARY APPROVAL OF \$26,135 FOR ADDITIONAL DESIGN SERVICES TO ACCOMMODATE SANTA CLARA COUNTY LIBRARY BOOK SORTING SYSTEM AND ESTABLISH AN ADDITIONAL SERVICE CONTINGENCY**
*Action(s): **Authorized** Amendment of Contract Agreement with Noll & Tam to Provide the Redesign Services Necessary to Accommodate the Santa Clara County Book Sorting System. The Amendment will also **Establish** an Additional Service Contingency for Unforeseen Issues that Could Arise During the Construction Phase.*
9. **COMMUNITY SPECIAL EVENT FUNDING REQUEST FOR HOLIDAY LIGHTS PARADE AND TREE LIGHTING CEREMONY**
*Action(s): **Allocated** \$2,900 to Morgan Hill Kiwanis for the Annual Holiday Lights Parade and Tree Lighting Ceremony.*
10. **ADOPT ORDINANCE NO. 1798, NEW SERIES**
*Action(s): **Waived** the Reading, and **Adopted** Ordinance No. 1798, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1756, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-04-14: CENTRAL-HU (DELCO) TO ALLOW FOR AN EIGHT MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A THREE MONTH EXTENSION OF THE COMMENCE CONSTRUCTION DATE FOR 19 ALLOCATIONS RECEIVED IN THE 2004 RDCE COMPETITION (APN 726-26-004).***

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Redevelopment Agency Board, on a 4-0 vote with Vice-chair Grzan absent, **Approved** Consent Calendar Items 11-12, as follows:*

11. Y'A BON ESPRESSO BAR LEASE AMENDMENT

Action(s): ***Authorized** the Executive Director to **Negotiate**, **Prepare**, and **Execute** an Amended Lease Agreement with Y'a Bon, An Espresso Bar, LLC (Y'a Bon) to Allow Y'a Bon to Temporarily Stop Making Lease Payments from November 1, 2006 Through the End of Construction of Depot Street, Estimated by January 15, 2007; Subject to Review and Approval by the Agency Counsel.*

12. FIRST QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP

Action(s): ***Accepted** the Report.*

City Council Action

PUBLIC HEARINGS:

13. ZONING AMENDMENT APPLICATION, ZAA-05-11: CITY OF MORGAN HILL – DOWNTOWN ZONING AMENDMENTS – *Ordinance Nos. 1799, 1800, 1801, and 1802, New Series*

Council Member Sellers indicated that he spent some time last week and this week working with the City Attorney on a couple of matters. He stated that he recently leased a small office space in the downtown area and that he owns a home at the north end of the downtown. He wanted to make sure that it was appropriate that he remain on the Dais this evening. He thanked the City Attorney for spending a significant amount of time researching and covering the issue. He stated that it was found that there would be no conflict on this item because the space he leases is located on the second floor, and that it is in a property that will not be facing changes. Therefore, there is no conflict with the space he leases on a month to month basis, and the amendment will not cause any substantive gains to the property.

Senior Planner Marlatt presented the staff report; indicating that the Downtown Plan, completed in 2003, contains policies that encourages retail restaurants and entertainment uses on Monterey and Third Street. He stated that the policies were implemented through amendments to the CC-R zoning district in 2004. This made it possible for personal service uses to be conditional permitted. He stated that shortly after these amendments went into affect, some frustration was expressed by business owners as well as potential tenants with regards to the amount of time it took to secure a conditional use permit. Therefore, last year, the Council approved amendments that authorized staff to approve "downtown administrative" use permits. During the hearings last fall, the Downtown Association requested follow up amendments,

and that the Council directed staff to work on these. The proposed amendments are the subject of the hearing this evening. He informed the Council that it directed staff to work on four items: 1) ground floor retail is to be restricted from Main to Dunne Avenues; 2) to exclude buildings that were clearly designed as office buildings and otherwise not suitable for retail; 3) to allow the downtown administrative use permit when the retail vacancy rate exceeds 5%; and 4) to impose a three year time limit on downtown administrative use permits. In order to address the first two items, staff is proposing the creation of a ground floor overlay district. The overlay district would provide a list of ground floor uses that would apply in lieu of the uses allowed in the CC-R zoning district. He clarified that all of the other CC-R zoning district regulations would remain in effect. He noted there are a couple of properties that are to be excluded from the district located at the corner of Fourth Street and Monterey Road and the southwest corner of First Street and Monterey Road. He indicated that the Downtown Association, staff and the Planning Commission felt there is very little retail potential on these properties as the ground floors are elevated above the sidewalk level. Further, there are very few windows in the buildings and would not be conducive to retail uses.

Senior Planner Marlatt recalled that the ordinance created last year contained a number of criteria that allows staff to approve downtown administrative use permits. He addressed the existing criteria as well as the added criteria such as: 1) vacancy rate to be implemented through biannual reports provided by the Downtown Association to staff in order to monitor vacancy rate; 2) allows personal service uses if they are ancillary to retail uses in a particular space; and 3) added a three-year expiration for these use permits. He informed the Council that the Planning Commission had other suggestions for additional amendments. Therefore, the CC-R zoning district includes a number of additional uses such as business and trade schools, antique shops, women's clothing stores, etc. He stated that there are also commercial use performance standards included in the CC-R zoning district that predated the Downtown Plan that were intended to promote compatibility with adjacent commercial and residential uses. He informed the Council that this section is recommended to be amended by the Planning Commission in order to make it easier for commercial development to locate adjacent to residential uses in the core area. There was also a Planned Unit Development (PUD) requirement added by the Planning Commission for any mixed use development proposed in the core area to give the Planning Commission and the City Council some way to negotiate an appropriate amount of commercial area in a mixed use development.

Senior Planner Marlatt stated that the proposed ordinance represents a tremendous amount of work by the Downtown Association and the Planning Commission. Staff recommends introduction of four ordinances that would: 1) create the ground floor level district; 2) rezone properties; 3) amendments to the CC-R zoning district; and 4) amendment to the downtown administrative use permit chapter.

Mayor Kennedy inquired as to the origin for the exclusion of the two properties located on Monterey Road at First and Fourth Streets. He inquired whether there was a way to eventually convert/modify these properties in such a way that they might be appropriate for retail uses.

Senior Planner Marlatt said that the genesis for the exclusion of the two properties was the frustration expressed by potential tenants and some of the building owners. They felt the buildings were designed as office buildings and that to put someone through a use permit process would be cumbersome. He stated that there is the opportunity to redevelop the properties in the future. He clarified that the ordinance would provide assistance and makes it easier for mixed use to occur; including retail uses. He

noted that these properties are not included in the overlay district; therefore, office uses would be permitted with no use permit being required. Should the buildings be torn down or rebuilt in the future, the City may want to look at including these properties in the overlay district.

Mayor Kennedy stated that he would like to find a way to encourage these buildings to convert to retail.

Council Member Sellers inquired whether the new PUD would be applied to new mixed use development, and would require them to go through Measure C or some other process. He inquired whether the proposed PUD adds to the process in terms of cost, time, planning, and design activities on the City's part and the developer's part.

Senior Planner Marlatt indicated that the Measure C process would apply for the residential component of a project and that Measure C does not apply to commercial space.

Council Member Sellers inquired whether the ordinance is effectively stating that retail would be required on the first floor and residential on the second floor.

Senior Planner Marlatt noted that the CC-R zoning district allows residential uses on the ground floor. The Planning Commission expressed concern that there might be a token amount of commercial space proposed in a mixed use project, and that it might have ground floor residential units. The Planning Commission wanted to have the ability to negotiate with developers; encouraging developers be brought on board early on in the conceptual stages; having preliminary discussions with the Planning Commission. He informed the Council that there would be approximately a \$5,000-\$7,000 in PUD fees, and would involve hearings before the Planning Commission and the City Council.

Mayor Kennedy opened the public hearing.

Theresa Kiernan, stated that she was in attendance on behalf of Gary Walton. She referred to section 18.24.070, drive thru establishments, of the proposed ordinance amendments. She said that it was Mr. Walton's understanding that the City would be looking for a pedestrian friendly downtown. If the City is going to create designs where you are encouraging cars and traffic, this will result in additional cars and traffic. She did not believe that additional drive through establishments in the downtown bears well with the concept of having a pedestrian friendly downtown. She requested the Council take a look at this issue. She also referred to Section 18.24.110, setback requirements for both the east and west sides of Monterey Road for mixed residential and commercial developments. She indicated that Mr. Walton wants to make sure that on the east side of Monterey Road, the City is looking at a 15-foot setback, and a 25-foot setback on the west side.

Senior Planner Marlatt clarified that the Planning Commission does not recommend setback requirements on Monterey Road between Main and Dunne Avenues. He said that the CC-R district extends beyond the downtown; therefore, there were other properties that could be impacted. Given the fact that a conditional use permit would be required, it gives the City some discretion over proposed uses.

City Manager Tewes said that the Council may want to give consideration to whether it believes the new issue is sufficient enough to refer it back to the Planning Commission; noting that the Planning Commission spent a lot of time on this item. It was his belief the Planning Commission would appreciate hearing all issues before presenting a comprehensive recommendation to the Council.

Ted Fox addressed the Council as the Chair for the Chamber of Commerce. He commended staff for being creative and innovative as far as working toward revitalizing the downtown and in opening up new options for development. The Chamber believes there are significant and appropriate controls included in the proposed ordinance to ensure development is properly controlled, and that there are appropriate reviews that will take place. Therefore, the Chamber of Commerce is in support of the proposed ordinance amendments.

No further comments being offered, the public hearing was closed.

Council Member Sellers stated that he had some concerns about the PUD process. However, giving it additional thought, he felt it provides flexibility. It was his belief the key would be on how the PUD is implemented. He recommended staff and Council members do everything they can to make sure the PUD process is streamlined as much as possible. He felt there will be key areas where the City will want to provide additional retail/commercial uses. If the PUD process gives the City the opportunity to provide the leverage to make sure appropriate mixed use projects are proposed, it would be important. He felt that it would be incumbent upon the City to make sure it is concurrently ensuring the City has a healthy retail climate. Should the vacancy rate go above 5%; the City would have additional latitude. He noted that the vacancy rate has not exceeded 5% in the past 15-years. However, the City has not seen any new retail space in the past 20-30 years. He felt it important to keep in mind this balance. He was anxious to see new retail space; in terms of type of space and quantity.

Mayor Kennedy stated that he has seen mixed use overlay zones in other cities. He felt that the mixed use overlay provides incentives to encourage mixed use development. It was his belief the Council was trying to achieve the goal of encouraging mixed use development. He inquired how the proposed changes would encourage mixed use development.

Senior Planner Marlatt responded that changes are proposed by the Planning Commission to the performance standards in the CC-R zoning district encourages mixed use development. The Planning Commission eliminated the setback requirements in the core area; eliminated the prohibition of certain uses that were high trip generators when adjacent to residential areas; eliminated ARB requirements for a change in occupancy from residential to commercial, etc., in order to make the performance standards more user friendly.

Mayor Kennedy said that it appears the City is working around the edges rather than taking an aggressive approach.

City Manager Tewes agreed that the City is working around the edges; cleaning up and improving previous actions by the Council that were more significant in terms of providing incentives for mixed uses. This included the elimination of the requirement for parking among other items that were a part of the Downtown Plan. He stated that the City continues to make it easier for mixed use, but that it is

correct to state that these are marginal improvements compared to the major improvements the Council made over the past two-years.

Senior Planner Marlatt informed the Council that staff is in the process of releasing an RFP to update the Downtown Plan. Doing so would provide the City a tremendous opportunity to expand even more on this objective.

Council Member Tate felt that there still remain open questions. He did not know who would be the first to propose a mixed use development when the developer would become the pioneer in this area. He encouraged the City take this into account should the Council move forward with the ordinance amendments. He recommended the City be on top of mixed use development and facilitate its development potential as much as possible.

Council Member Carr requested additional information on the recommended three-year timing.

Senior Planner Marlatt clarified that a use permit in the downtown CC-R zoning district would expire at the end of three-years; however, a provision is included in the ordinance that would allow for a request for an extension to the use permit. He informed the Council that this time period was recommended by the Downtown Association as it coincides with a typical commercial lease. He stated that the ordinance, as drafted, will allow a lessee to apply for an extension nine-months before the lease expires. He clarified that there are no limits to the number of extensions a use permit can request/receive.

City Manager Tewes clarified that within the downtown; retail is encouraged and allowed without a permit. The ordinance addresses the non-retail uses that would have to go through the downtown administrative use permit process. A use permit for a specified period of time is part of a strategy to not allow uses that are not consistent with the Downtown Plan to become permanent fixtures. The ordinance would require constant review of the office and service uses that are inconsistent with the Downtown Plan's objectives.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1799, New Series, adding Chapter 18.23.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council Introduced Ordinance No. 1799, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING CHAPTER 18.23 (DOWNTOWN GROUND FLOOR OVERLAY DISTRICT) TO IMPLEMENT THE MORGAN HILL DOWNTOWN PLAN RECOMMENDATION OF ENCOURAGING RETAIL, RESTAURANT, ENTERTAINMENT AND RELATED USES (ZAA-05-11: CITY OF MORGAN HILL – DOWNTOWN ZONING AMENDMENTS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1800, New Series, rezoning certain properties.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council Introduced Ordinance No. 1800, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REZONING CERTAIN PROPERTIES GENERALLY LOCATED ON MONTEREY ROAD BETWEEN MAIN AVENUE AND 5TH STREET AND ON 3RD STREET BETWEEN MONTEREY ROAD AND DEPOT STREET (APN'S 726-14-001 THROUGH -008, -010 THROUGH -014, -027 THROUGH -030, -036, AND -048 THROUGH -050; 767-07-010 THROUGH -011, -029 THROUGH -031, -047 THROUGH -050, -057, -058, -064, AND -066; 726-08-004, -006, -044 AND -045; 726-13-017 THROUGH -021, AND -037 THROUGH -044) TO INCLUDE THE GF (DOWNTOWN GROUND FLOOR OVERLAY) DISTRICT (ZAA-05-11: CITY OF MORGAN HILL – DOWNTOWN ZONING AMENDMENTS) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.***

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1801, New Series, amending Chapter 18.24.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council Introduced Ordinance No. 1801, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.24 (CC-R - CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT) BY REORGANIZING ALLOWABLE USE CATEGORIES INTO PERMITTED USES AND CONDITIONAL USES AND MODIFYING DEVELOPMENT STANDARDS (ZAA-05-11: CITY OF MORGAN HILL – DOWNTOWN ZONING AMENDMENTS) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.***

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1802, New Series, amending Chapter 18.54.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council Introduced Ordinance No. 1802, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.54 (CONDITIONAL AND TEMPORARY USE PERMITS) BY MODIFYING FINDINGS REQUIRED FOR APPROVAL OF A DOWNTOWN ADMINISTRATIVE USE PERMIT, ESTABLISHING A THREE YEAR TIME LIMIT, AND A PROCESS FOR EXTENSIONS (ZAA-05-11: CITY OF MORGAN HILL – DOWNTOWN ZONING AMENDMENTS) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.***

14. ZONING AMENDMENT, ZA-06-12: CITY OF MORGAN HILL – EXCEPTIONS AND MODIFICATIONS TEXT AMENDMENTS – Ordinance Nos. 1803, 1804, 1805, and 1806, New Series

Director of Community Development Molloy Previsich presented the staff report on the ongoing efforts to update the City's ordinance; starting with Section 18.56 – Exception and Modifications. She indicated that this Section of the Municipal Code contains a lack of specific standards for certain items such as accessory structures, pools, decks, spas, etc., as well as lack of clarity. She informed the Council that Section 18.56 is one of the most used sections of the zoning ordinance as the City receives several inquiries from homeowners about what they can do in their back/front yards, fence height, etc. Staff is recommending the existing ordinance be split into two chapters; creating a new chapter 18.56 entitled "Accessory Structures" and a new chapter 18.57 that would deal with exceptions. She informed the Council that staff is recommending that the Council change the commercial and industrial performance standards chapter to be entitled "Performance Standards" that would address residential, commercial and industrial standards. Staff further recommends there be clarification of zoning definitions as well as adding several new zoning definitions. She informed the Council that on October 10, 2006, the Planning Commission reviewed the proposed text amendments and voted 6-0 to recommend Council approval of the proposed text amendments.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers indicated that he recently replaced a fence and that he had to read through the fence ordinance four times. He felt that the proposed ordinance is great as it is simple to read/understand and that it is clear, makes sense, and avoids problems. He appreciated the fact that staff wrote this section in such declarative language.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1803, New Series, amending Chapter 18.04.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council Introduced Ordinance No. 1803, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.04 DEFINITIONS OF THE MORGAN HILL MUNICIPAL CODE (ZA-06-12: CITY OF MORGAN HILL – EXCEPTIONS AND MODIFICATIONS TEXT AMENDMENTS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1804, New Series, replacing Chapter 18.48.*

- Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council Introduced Ordinance No. 1804, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPLACING CHAPTER 18.48 COMMERCIAL AND INDUSTRIAL PERFORMANCE STANDARDS WITH NEW TEXT FOR CHAPTER 18.48 ENTITLED PERFORMANCE STANDARDS (ZA-06-12: CITY OF MORGAN HILL – EXCEPTIONS AND MODIFICATIONS TEXT AMENDMENTS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1805, New Series, replacing Chapter 18.56.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council Introduced Ordinance No. 1805, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPLACING SECTION 18.56 OF THE MORGAN HILL MUNICIPAL CODE CURRENTLY TITLED EXCEPTIONS AND MODIFICATIONS WITH ALL NEW TEXT AND RETITLED AS ACCESSORY STRUCTURES, CHAPTER 18.56 (ZA-06-12: CITY OF MORGAN HILL – EXCEPTIONS AND MODIFICATIONS TEXT AMENDMENTS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1806, New Series, Adopting Chapter 18.57.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council Introduced Ordinance No. 1806, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CREATING CHAPTER 18.57 EXCEPTIONS, AS A NEW CHAPTER TO THE ZONING ORDINANCE OF THE MORGAN HILL MUNICIPAL CODE (ZA-06-12: CITY OF MORGAN HILL – EXCEPTIONS AND MODIFICATIONS TEXT AMENDMENTS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.*

City Council Action

OTHER BUSINESS:

15. RESOLUTION IN SUPPORT OF PROPOSITION 86 – TAX ON CIGARETTES INITIATIVE – Resolution No. 6059

Council Member Carr indicated that he would be recusing himself from this item because it may affect his employer. He excused himself from the Council Chambers.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler informed the Council that the Morgan Hill Chamber of Commerce Board of Directors voted to support Proposition 86. While some individuals claim the percentage devoted by the initiative for smoking issues to be addressed through education would be very small, the Board's action demonstrates that whatever the percentage is, it is better than nothing. He said that you see, hear, read and watch how rapidly emergency care facilities and hospitals are disappearing in California because of financial burdens. He noted that an individual in dire need of emergency services must wait for long periods of time. He said that public safety is in the forefront of individuals' lives, and that the Board believes Proposition 86 will go a long way to help solve some of these problems.

Ted Fox spoke in support of the resolution. He stated that he does not know of many individuals in favor of having 700,000 children start smoking in California over the next few years. He did not know of many individuals in favor of having individuals continue to maintain their smoking habits; not withstanding the effects on their health. He does not know of many individuals interested in continuing to pay higher taxes to support healthcare services in order to pay for smoking related illnesses. He felt that Proposition 86 would assist to address a number of these things as it will raise taxes on cigarettes to inhibit smoking on the part of 700,000 children across the state of California, and will have a great affect upon the number of smokers across the state. Proposition 86 will also save billions of dollars in taxes that must be paid to support health care services that are necessary to support cigarette illnesses; including medical services for individuals who are poor and are forced to turn to hospitals for their care. Proposition 86 also assists hospitals and emergency departments in maintaining their doors open 24-hours, 7 days a week to care for individuals. He wants to make sure that St. Louise Regional Hospital remains open to serve individuals. He indicated that a great amount of funding will go toward research and inhibition/smoking cessation, and assisting individuals with healthcare services. He indicated that big tobacco companies will not be there for an individual who is in a hospital. However, the American Cancer Society, American Heart Association, the California Education Association and PTA will be there to care for individuals. He indicated that these organizations support this proposition.

No further comments were offered.

Council Member Tate stated that he did not disagree with any of the comments expressed under public comment. He felt this issue affects counties and healthcare providers. However, he did not know the direct impacts to the City of Morgan Hill, and did not know why the City should take a position on a proposition that does not directly affect it. Should the City take a position on this proposition, he felt that the City should be taking a position on very proposition on the ballot as well. He did not know why this proposition was singled out.

Mayor Kennedy noted that St. Louise Regional Hospital is the closest emergency/medical facility to Morgan Hill. It is a known fact that emergency rooms are used by those who cannot afford medical services. Should the proposition pass, it would provide funding to make sure that emergency rooms remain open. Further, he felt the Council needs to send a message that it supports the proposition. He supported taking a stand in support of Proposition 86.

Council Member Sellers stated that he appreciates Council Member Tate's comments regarding impacts to the community. He recommended the Council consider whether there are any substantive impacts to businesses or other entities that should be taken into consideration. He noted that last Saturday, the City opened the Centennial Recreation Center because it finds a significant value in having a healthy community. It was his belief that the impact of cigarettes on a community affects everyone, in terms of cost. Due to the fact the City is involved in promoting a healthy community, he would be inclined to be supportive of Proposition 86.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Sellers, the City Council, on a 2-0-1 vote with Council Member Tate abstaining and Council Member, Carr and Mayor Pro Tempore Grzan absent, **Adopted** Resolution No. 6059 in Support of Proposition 86.*

Council Member Carr resumed his seat on the Dais.

16. REVIEW OF PROPOSED SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION (LAFCO) AGRICULTURAL MITIGATION POLICIES

Contract Planner Bischoff informed the Council that Santa Clara County LAFCo has drafted new policies that address the conversion of agricultural and urban use. He indicated that the draft policies are scheduled to be reviewed by the LAFCo Commission on December 13, 2006. He stated that the purpose of this agenda item is to inform the Council on the contents of the draft policies and to determine whether the Council wishes to provide comments to LAFCo regarding specific policies. He informed the Council that the draft policies represent a major change to existing LAFCo policies regarding agricultural land preservation. He identified the changes and proposed policies. He indicated that the draft policies have been reviewed by staff with the Council's Regional Planning & Transportation Committee. He stated that the Committee and staff have developed six concerns about the draft policies: 1) staff and the Committee do not believe LAFCo has the authority to adopt the policies as drafted; 2) concern with LAFCo's definition of prime agricultural land; 3) presumption that all agricultural lands identified have to be mitigated at a ratio of an acre per acre; and 4) out of agency requirement that mitigation measures occur. He said that when staff drafted the staff report, it was in response to the first draft of the LAFCo policies. Since staff met with the Committee, and since the staff report was prepared, a revised set of policies have been prepared by LAFCo. He informed the Council that the revised set of policies were forwarded to the Council. He indicated that the revised policies do not affect any of the prior four issues mentioned. 5) Concern that the timeframe identified by LAFCo is not workable; and 6) processing subsequent urban service area adjustment applications. He stated that although the policies would apply county-wide, there are three jurisdictions that would be affected by these policies: Morgan Hill, Gilroy and San Jose. He informed the Council that staff met with representatives from each of the jurisdictions to determine common issues and concerns; representing a single voice to LAFCo. It is staff's belief there is common ground and continues to discuss these with the other two jurisdictions.

Contract Planner Bischoff said that to date, the City has addressed the issue of agricultural conversation on a case by case basis. Further, there are policies contained within the City's general plan that discourages conversation. Consistent with LAFCo policy, staff suggests looking at infill and other items before converting agricultural lands. He said that CEQA evaluation determines whether agricultural lands need to be mitigated. Staff believes it would benefit the City to adopt a comprehensive set of policies that addressed the issue of agricultural land and open space preservation. Doing so would establish an expectation by property owners, and identification of the mitigations to be required based on what is considered significant loss. Staff further believes these types of policies are within the purview of the City and not LAFCo. Staff recommends the Council: 1) direct staff to develop a set of policies that deal with agricultural and open space preservation; 2) direct the Mayor to draft a letter to LAFCo advising them of the City's intent to draft such policies; 3) oppose LAFCo's adoption of the policies before the Council this evening; and 4) continue the matter to November 15. Continuance of this item would give staff the opportunity to hear the Council's input and decide what needs to go into the letter; returning with the draft letter to the Council on November 15. This would also give staff additional time to work with neighboring cities to find common grounds/approach to take together.

City Attorney Kern said that it is not unusual for an organization to exceed their authority. Staff believes that LAFCo, in this instance, has exceeded their authority. However, staff believes its argument is stronger in that LAFCo does not have the authority to do so.

Contract Planner Bischoff said that LAFCo staff has taken the position that the land that needs to be preserved is already in agricultural or open space use, and does not constitute a land use decision or land use regulation.

Mayor Kennedy indicated that the Regional Planning & Transportation Committee met with staff. He said that it is clear that LAFCo is trying to push this through before the end of the year, and may be politically oriented/motivated because some terms are ending. It is clear to the Committee and staff that this issue is being rushed by LAFCo. The Committee recommends the City control its land use planning and its destiny; noting the City spent years on the urban limit line; planning for what the City will do around the fringes of Morgan Hill. He said that LAFCo may preempt any actions the City might take. He recommended the City develop policies for land conversion mitigation; submitting this to LAFCo for their review. However, the City needs time to develop policies. He noted that it was Council Member Sellers' suggestion that the Council start the process of developing the City's own open space and agricultural conversion and mitigation policies; submitting them to LAFCo.

Council Member Sellers recommended the Council make it clear that it vigorously opposes LAFCo's policy, should the Council concur. The Committee believes a letter should make it clear that the City is opposed to LAFCo proceeding with their draft policies, and that the Council vigorously opposes it.

Council Member Carr felt it important to impress upon LAFCo the City's interest in doing something in this area is not a knee jerk reaction to what they are doing. He acknowledged the City followed through with years of work regarding the City's urban limit line and policies contained in the general plan. Further, this is a direction the City has been heading for some time. Therefore, the City is not merely reacting to LAFCo on this matter.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia felt the Urban Limit Line Committee was a balanced group that came up with a lot of great suggestions on how to address agricultural and open space. He felt the proposal by LAFCo merely flies in the face of the City calling for its own destiny. He felt it important for the City to maintain its agricultural heritage where it wants to and not have someone from Palo Alto or Milpitas dictate Morgan Hill's land use policy(ies). He supports the recommendations as expressed by Mr. Bischoff; suggesting the re-establishment of the urban limit line committee to address this issue.

No further comments were offered.

Council Member Sellers noted that LAFCo will be holding a workshop on November 13 and that the Council will be meeting on November 15. He inquired whether the Council should provide comments prior to the November 13 LAFCo meeting.

Contract Planner Bischoff indicated that staff attended a prior LAFCo workshop where LAFCo staff explained what they were proposing. It was his belief that City staff can provide some input. However, he noted that staff provided input at the last LAFCo workshop.

City Manager Tewes noted that it was indicated by Mr. Bischoff that there are three jurisdictions that would be impacted by LAFCo policies; San Jose, Gilroy, and Morgan Hill. He indicated that the San Martin incorporation group indicated that they have not been previously notified, and that they will be bringing their concerns to the workshop.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent: 1) **Directed** Staff to Develop Open Space and Agricultural Lands Conversion Policies for the City; and 2) **Directed** the Mayor to Draft a Letter to LAFCO Informing the Commission of the City's Intent, and Opposing LAFCO Adoption of its Proposed Mitigation Policies.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

City Council Action

CLOSED SESSION:

City Attorney Kern announced the below listed closed session item.

1.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Government Code Section 54957.6
Agency Negotiators:	City Manager; Human Resources Director
Employee Organizations:	Employees Covered under Management Resolution No. 6023

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the closed session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 9:09 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 9:14 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:15 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY